

**REMARKS**

Claims 1, 2, 5-12, 15-22, 25-27 and 30 are pending in the application.

Claims 1, 2, 5-12, 15-22, 25-27 and 30 have been rejected.

Claims 1, 2, 5-12, 15-22, 25-27 and 30 remain pending in this application.

Claims 1, 11, 21, and 26 have been amended herein.

Reconsideration of the claims is respectfully requested.

**I. CLAIM REJECTION UNDER 35 U.S.C. § 103**

Claims 1, 2, 5-12, 15-22, 25-27 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,687,901 to *Imamatsu*, hereinafter “Imamatsu” in view of U.S. Patent No. 6,928,579 to *Äijä, et al.*, hereinafter “Äijä.” The Applicants respectfully traverse the rejection.

In ex parte examination of patent applications, the Patent Office bears the burden of establishing a prima facie case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a prima facie basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a prima facie case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does

not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A prima facie case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

1. A wireless communication device capable of downloading a software update file from a wireless network, said wireless communication device comprising:
  - a non-volatile memory capable of being re-programmed by sectors, wherein said non-volatile memory stores: 1) a target file to be updated, 2) said downloaded software update file, and 3) a journal comprising a plurality of entries, each of said plurality of entries containing status information associated with a re-programmed sector of said non-volatile memory;
  - a random access memory; and
  - a main processor capable of replacing target code in said target file with replacement code from said downloaded software update file, wherein said main processor creates a first block of replacement code in said random access memory and re-programs a first target sector of

said non-volatile memory by storing said first block of replacement code into said first target sector, and wherein said main processor updates first status information in a first entry in said journal associated with said first target sector, and wherein said main processor is further capable of storing first target code from said first target sector in a save-area of said non-volatile memory prior to storing said first block of replacement code into said first target sector and said first status information comprises a second parameter indicating that said first target code from said first target sector was successfully stored in said save-area of said non-volatile memory, wherein the journal further comprises information sufficient for the recovery of an error during the replacing of the target code with replacement code through two independently erasable sectors and at least one save-area sector of non-volatile memory.

Amended Claim 1 comprises the element, "the journal further comprises information sufficient for the recovery of an error during the replacing of the target code with replacement code through two independently erasable sectors and at least one save-area sector of non-volatile memory." The use of two independently erasable sectors and one save-area sector of non-volatile memory that allows recovery of an error during software updates is not taught, suggested, or anticipated by the prior art of record. The disclosed approach allows for the recovery of the software update process in the event of a power loss. This is discussed in the original application, paragraphs [043]-[044] which are reproduced below:

In order to retain enough information for recovery after a sudden power loss, two independently erasable sectors of flash memory 270 (sectors 341 and 342) are required for writing the journal. When one journal sector is filled with journal records, the second journal sector is erased and used for the next journal entry. Thus, any power loss during the erasing of the second journal sector will not affect the information already committed to the first journal sector. This order of switching between Journal Sector 1 and Journal Sector 2 is crucial to the recovery algorithm. It guarantees that at any point in time, a valid

journal record is present that accurately describes the last successful sector re-programming operation in NV memory 270.

Additionally, the present invention uses save-area sector 350 of NV memory 270 to save the previous contents of a sector that is about to be modified with results from applying patch instructions. Save-area sector 350 is necessary to restore the previous contents if the sector-modify operation is interrupted.

As such, amended independent Claim 1 is patentable over the cited references. Amended independent Claims 11, 21 and 26 recited limitations analogous to the novel and non-obvious claims emphasized in traversing the rejection of Claim 1 and, therefore, also are patentable over the cited references. Claims 2 and 5-10 depend from Claim 1, Claims 12 and 15-20 depend from Claim 11, Claims 22 and 25 depend from Claim 21, and Claims 27 and 30 depend from Claim 26, and include all the limitations of their respective base claims. Therefore, Claims 2, 5-10, 12, 15-20, 22, 25, 27 and 30 also are patentable over the cited references.

Accordingly, the Applicants respectfully request the Examiner to withdraw the § 103 rejection with respect to these claims.

CONCLUSION

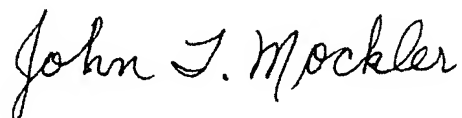
As a result of the foregoing, the Applicants assert that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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